IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.5186 OF 2001

Shri Vijay C. Puljal. ...Petitioner.

Versus

State of Maharashtra & Ors. ...Respondents.

.....

Mr. Vinod Bobde, Senior Advocate with Mr.Vineet B. Naik and Mr. Arjun Bobde for the Petitioner.

Mr. E. P. Bharucha, Special Counsel with Mr. Bhomi Patel, AGP and Mr.N. P. Deshpande, AGP for Respondent No.1.

.....

WITH

WRIT PETITION NO.517 OF 2004

Pulluru Bhaskara Rao & Ors. ...Petitioners.

Vs.

State of Maharashtra & Ors. ...Respondents.

....

WITH

WRIT PETITION NO.7480 OF 2003

Nurpender Rao & Ors. ...Petitioners.

Vs.

State of Maharashtra & Ors. ...Respondents.

.....

Mr. Vinod Bobde, Sr.Advocate with Mr.Vineet Naik and Mr. Arjun Bobde for the Petitioners.

Mr. E. P. Bharucha, Special Counsel with Mr. Bhomi Patel, AGP and Mr. N. P. Deshpande, AGP for Respondent No.1.

.....

WITH
WRIT PETITION NO.3661 OF 2001
WITH
CIVIL APPLICATION NOS.2017/03, 1104 & 1105/04, C.A. ST. NO. 19061/04 AND C.A.NO.1063/05

M/s.Kuber Mutual Benefit Ltd. & Ors. ...Petitioners.
Vs.
State of Maharashtra & Ors. ...Respondents.

.....

Mr.Y. R. Singh for the Petitioners.
Mr. E. P. Bharucha, Special Counsel with Mr. Bhomi Patel, AGP and Mr. N. P. Deshpande, AGP for Respondent No.1.
Mr. Kirit J. Hakari for the Applicant in CA 2017/03.

.....

WITH
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.2175 OF 1999

M/s.Indian Seamless Financial Services Ltd.& Ors. ...Petitioners.
Vs.
Abhinay C. Deshmukh & Anr. ...Respondents.

.....

Ms. Parul Bhatia i/b.Mulla & Mulla for the Petitioners.
Mr.Naveen Chomal for Respondent No.1.
Ms.Kantharia, APP for Respondent No.2.

.....

WITH
WRIT PETITION NO.685 OF 2000

Heritage India Club Ltd. & Anr. ...Petitioners.
Vs.
State of Maharashtra & Ors. ...Respondents.

.....

Ms.Kantharia, APP for Respondent No.1 and 2.
Mr.R. D. Soni and Mr. J.K. Hegde for Respondent No.3.

.....

WITH
WRIT PETITION NO.903 OF 2000

Uday Manohar Acharya. ...Petitioner.
Vs.
State of Maharashtra & Anr. ...Respondents.
.....
Mr.Nitin Pradhan, with Ms.S. D. Khot i/b. M/s.Law Global for the Petitioners.
Ms.P. H. Kantharia, APP for Respondent Nos.1 and 2.
.....
WITH
WRIT PETITION NO.716 OF 2001

S.M.Khanna & Ors. ...Petitioners.
Vs.
Alda Coelho & Ors. ...Respondents.
.....
Mr.Nitin Pradhan with Racheeta R. Dhuru for the Petitioners.
Mr. S.K. Jain for Respondent No.1.
Ms. P.H. Kantharia, APP for Respondent No.11.
.....
WITH
WRIT PETITION NO.1569 OF 2001

Subhash Sadashiv Karkhanis & Ors. ...Petitioners.
Vs.
The Senior Inspector of Police & Ors. ...Respondents.
.....
Mr.M. S.Mohite for the Petitioners.
Mr. S. R. Borulkar, APP. for Respondent No.1.
.....
WITH
WRIT PETITION NO.150 OF 2002
WITH
APPLICATION NOS.4034/05, 4481/02 & 4634/03

Nilesh Lalit Parekh. ...Petitioner.
Vs.
State of Maharashtra & Ors. ...Respondents.
.....

Mr. Virendra Tulzapurkar with Mr. P. K. Samdani i/b. M/s.Prakash & Co. for the Petitioners.
Mr. S. R. Borulkar, APP for Respondent No.1.

.....

WITH

WRIT PETITION NO.234 OF 2002

AND

WRIT PETITION NOS.1669 & 1782 OF 2002

Pratap V. Padode.
Sanjay Padode
Rajesh Padode. ...Petitioners.

Vs.

Shripad C. Thakur & Ors. ...Respondents.

.....

None for the Petitioners.
Mr. S. R. Borulkar, APP for the State.
Mr. S.P. Kadam for Respondent Nos.1 and 2.

.....

WITH

WRIT PETITION NO.890 OF 2002

Vinayak Gopinath Vengurlekar. ...Petitioner.

Vs.

Sunil More & Anr. ...Respondents.

.....

Mr. M. S. Mohite with Mr. G.P. Rajan for the Petitioner.
Mr. D. M. Shah & Mr. P.G. Karande for Respondent No.1.
Mr.S. R. Borulkar, APP for Respondent No.2.

.....

WITH

WRIT PETITION NO.1382 OF 2002

Purshottam Radheshyam Khandelwal. ...Petitioner.

Vs.

Union of India & Ors. ...Respondents.

.....

Mr.A. M. Saraogi for the Petitioner.
Mr.S. R. Borulkar, APP for Respondent No.2.

Smt.Aarti P. Bhide for Respondent No.3.

.....

WITH

WRIT PETITION NO.1582 OF 2002

Mohammed Hussain Mohammed Ismail
Khatkhatay & Ors. ...Petitioners.

Vs.

Union of India & Ors. ...Respondents.

.....

Mr.A. M. Saraogi for the Petitioners.
Mr. D. S. Mehta, APP for Respondent No.1.

.....

WITH

APPLICATION NOS.4714 & 644 OF 2003

IN

APPEAL NO.195 OF 2003

WITH

APPEAL NO.195 & 198 OF 2003

Hariram Mohandas wadhwa & Ors. ...Petitioners.

Vs.

M/s.Indic Farms & Ors. ...Respondents.

.....

Mr.A. N. Makhijani for the Petitioners.
Mr. D. S. Mhaispurkar., APP for the State.

.....

WITH

WRIT PETITION NO.441 OF 2003

Deepak R. Wagle & Anr. ...Petitioners.

Vs.

State of Maharashtra & Ors. ...Respondents.

.....

Mr.S. K. Jain for the Petitioners.
Mr.D. S. Mhaispurkar, APP for Respondent No.1.

.....

WITH

WRIT PETITION NO.669 OF 2003

Sanjay Chandrakant Kirloskar & Ors. ...Petitioners.
Vs.
Vivekanand Vithal Awale & Ors. ...Respondents.
.....
Mr. Nitin Pradhan with Ms. S. D. Khot for the Petitioners.
Mr. D. S. Mhaispurkar, APP for Respondent No.1.
.....
WITH
WRIT PETITION NO.871 OF 2003

Dr. V. Parameshvara. ...Petitioner.
Vs.
Kirloskar Investment & Finance Ltd. & Ors. ...Respondents.
.....
Mr. Nitin Pradhan with Ms. S. D. Khot for the Petitioner.
Mr.D. S. Mhaispurkar, APP for Respondent No.1.
.....
WITH
WRIT PETITION NO.872 OF 2003

Dr. K. S. Lrosjmaswami. ...Petitioner.
Vs.
Kirloskar Investment & Finance Ltd. & Ors. ...Respondents.
.....
Mr. Nitin Pradhan with Ms. S. D. Khot for the Petitioner.
Mr. D. S.Mhaispurkar, APP for Respondent No.1.
.....
WITH
WRIT PETITION NO.1019 OF 2003

Rajinder Singh Dhanjal. ...Petitioner.
Vs.
State of Maharashtra & Ors. ...Respondents.
.....
Mr.A. M. Saraogi for the Petitioner.
Mr. A. S. Gadkari, APP for Respondent No.1.
.....
WITH

WRIT PETITION NO.1069 OF 2003
WITH
APPLICATION NOS.5043 & 5077 OF 2005

Central Bank of India. ...Petitioner.
Vs.
The Senior Inspector of Police & Ors. ...Respondents.
.....
Mr.Sanjog Parab i/b. M/s. Mulla & Mulla for the Petitioner.
Mr. A. S. Gadkari, APP for Respondent No.1.
.....
WITH
WRIT PETITION NO.1114 OF 2003

Deepak Krishnakant Purohit & Anr. ...Petitioners.
Vs.
State of Maharashtra & Ors. ...Respondents.
.....
Mr.Shirish Gupte with M. N. Vaishnav i/b. N.N. Vaishnava & Co. for the Petitioners.
Mr.A. S. Gadkari, APP for Respondent No.1.
.....
WITH
WRIT PETITION NO.1221 OF 2003

Dhanraj Betala & Anr. ...Petitioners.
Vs.
State of Maharashtra & Ors. ...Respondents.
.....
Mr.Sameer vaidya for the Petitioners.
Mr. K. V. Saste, APP for Respondent No.1.
.....
WITH
WRIT PETITION NO.1245 OF 2003

Subhash Sadashiv Karkhanis. ...Petitioner.
Vs.
Union of India & Ors. ...Respondents.
.....

Mr.A. V. Chatuphale for the Petitioner.
Mr. K. V. Saste, APP for the State.

.....

WITH

WRIT PETITION NO.1504 OF 2003

Morepen Laboratories Ltd. ...Petitioner.

Vs.

State of Maharashtra & Ors. ...Respondents.

.....

Mr. Mudij Sharma with Mr. Yashpal Thakkar i/b. Mr.Paras Kuhad for the Petitioners.
Mr. K. V. Saste, APP for Respondent No.1.

.....

WITH

WRIT PETITION Nos.108 & 109 OF 2004

Rajendrasingh. ...Petitioner.

Vs.

Union of India & Ors. ...Respondents.

.....

Mr.A. M. Saraogi for the Petitioner.
Mr. K. V. Saste, APP for Respondent No.2.

.....

WITH

WRIT PETITION NO.294 OF 2004

Dinesh Harilal Verma. ...Petitioner.

Vs.

State of Maharashtra & Ors. ...Respondents.

.....

None for the Petitioners.
Mr. S. S. Tatkar, APP for Respondent No.1.

.....

WITH

WRIT PETITION NO.382 OF 2004

M/s.Popular Stock & Share Services Ltd. & Ors. ...Petitioners.

Vs.

State of Maharashtra & Ors. ...Respondents.

.....

Mr. Samir A. Vaidya with Mr.L. R. Castelino for the Petitioners.
Mr. S. S. Tatkar, APP for Respondent No.1.

.....

WITH

WRIT PETITION NO.1408 OF 2004

M. V. Patwardhan. ...Petitioner.

Vs.

Vishnjukant Bapurao Urankar & Ors. ...Respondents.

.....

Mr. Nitin Pradhan with Ms.S. D. Khot i/b. Mr.Prakash Naik for the Petitioner.
Mr.S. S. Tatkar, APP for the State.

.....

WITH

WRIT PETITION NO.1409 OF 2004

M. V. Patwardhan. ...Petitioner.

Vs.

Usha Prabhakar Vaishampayan & Ors. ...Respondents.

.....

Mr. Nitin Pradhan with Ms.S. D. Khot i/b.Mr.Prakash Naik for the Petitioner.
Mr. P. S. Hingorani, APP for Respondent No.3 to 5

.....

WITH

WRIT PETITION NO.1410 OF 2004

M. V. Patwardhan. ...Petitioner.

Vs.

Narhar Madhav Panditrao & Ors. ...Respondents.

.....

Mr. Nitin Pradhan with Ms.S. D. Khot i/b. Mr.Prakash Naik for the Petitioner.
Mr. B. V. Ghanekhar for Respondent No.1.
Mr. P. S. Hingorani, APP for Respondent No.3 to 5.

.....

WITH
WRIT PETITION NO.1411 OF 2004

M. V. Patwardhan. ...Petitioner.
Vs.
Jayant Govind Jadhav & Ors. ...Respondents.

.....

Mr. Nitin Pradhan with Ms.S. D. Khot i/b. Mr.Prakash Naik for the Petitioner.
Mr. B.V.Ghanekar for Respondent No.1.
Mr.P. S. Hingorani, APP for Respondent No.3 to 5.

.....

WITH
WRIT PETITION NO.1412 OF 2004

M. V. Patwardhan. ...Petitioner.
Vs.
Anil Sakharam Dandekar & Ors. ...Respondents.

.....

Mr. Nitin Pradhan with Ms.S. D. Khot i/b. Mr.Prakash Naik for the Petitioner.
Mr. B.V.Ghanekar for Respondent No.1.
Mr. P. S. Hingorani, APP for Respondent No.3 to 5.

.....

WITH
WRIT PETITION NO.1413 OF 2004

M. V. Patwardhan. ...Petitioner.
Vs.
Vinayak Krishna Kulkarni & Ors. ...Respondents.

.....

Mr. Nitin Pradhan with Ms.S. D. Khot i/b. Mr.Prakash Naik for the Petitioner.
Mr. B.V.Ghanekar for Respondent No.1.
Mrs. S. D. Shinde, APP for Respondent No.3 to 5.

.....

WITH
WRIT PETITION NO.1414 OF 2004

M. V. Patwardhan. ...Petitioner.
Vs.
Babji Ramchandra Deshpande & Ors. ...Respondents.
.....
Mr. Nitin Pradhan with Ms.S. D. Khot i/b. Mr.Prakash Naik for the Petitioner.
Mr. B.V.Ghanekar for Respondent No.1.
Mrs. S. D. Shinde, APP for Respondent No.3 to 5.

.....

WITH

WRIT PETITION NO.1415 OF 2004

M. V. Patwardhan. ...Petitioner.
Vs.
Shashikant Madhav Panditrao & Ors. ...Respondents.
.....
Mr. Nitin Pradhan with Ms.S. D. Khot i/b. Mr.Prakash Naik for the Petitioner.
Mr. B.V.Ghanekar for Respondent No.1.
Mrs. S. D. Shinde, APP for Respondent No.3 to 5.

.....

WITH

WRIT PETITION NO.1417 OF 2004

Maheen Sanjay Chandrakant Kirloskar. ...Petitioner.
Vs.
Vishnukant Bapurao Urankar & Ors. ...Respondents.
.....
Mr. Nitin Pradhan with Ms.S. D. Khot i/b. Mr.Prakash Naik for the Petitioner.
Mr. B.V.Ghanekar for Respondent No.1.
Mrs. S. D. Shinde, APP for Respondent No.3 to 5.

.....

WITH

WRIT PETITION NO.1419 OF 2004

Maheen Sanjay Chandrakant Kirloskar. ...Petitioner.
Vs.
Usha Prabhakar Vaishampayan & Ors. ...Respondents.

.....

Mr.Nitin Pradhan with Ms.S. D. Khot for the Petitioner.
Mr. A. R. Patil, APP for Respondent No.3 to 5.

.....

WITH
WRIT PETITION NO.1420 OF 2004

Maheen Sanjay Chandrakant Kirloskar. ...Petitioner.
Vs.
Narhar Madhav Panditrao & Ors. ...Respondents.

.....

Mr.Nitin Pradhan with Ms.S. D. Khot for the Petitioner.
Mr. B.V.Ghanekar for Respondent No.1.
Mr.A. R. Patil, APP for Respondent No.3 to 5.

.....

WITH
WRIT PETITION NO.1421 OF 2004

Maheen Sanjay Chandrakant Kirloskar. ...Petitioner.
Vs.
Jaywant Govind Jadhav & Ors. ...Respondents.

.....

Mr.Nitin Pradhan with Ms.S. D. Khot for the Petitioner.
Mr. B.V.Ghanekar for Respondent No.1.
Mr.A. R. Patil, APP for Respondent No.3 to 5.

.....

WITH
WRIT PETITION NO.1422 OF 2004

Maheen Sanjay Chandrakant Kirloskar. ...Petitioner.
Vs.
Anil Sakharam Dandekar & Ors. ...Respondents.

.....

Mr.Nitin Pradhan with Ms.S. D. Khot for the Petitioner.
Mr. B.V.Ghanekar for Respondent No.1.
Mr. A. R. Patil, APP for Respondent No.3 to 5.

.....

WITH

WRIT PETITION NO.1423 OF 2004

Maheen Sanjay Chandrakant Kirloskar. ...Petitioner.

Vs.

Vinayak Krishna Kulkarni & Ors. ...Respondents.

.....

Mr.Nitin Pradhan with Ms.S. D. Khot for the Petitioner.
Mr. B.V.Ghanekar for Respondent No.1.
Mrs.Usha Kejariwal, APP for Respondent No.3 to 5.

.....

WITH

WRIT PETITION NO.1424 OF 2004

Maheen Sanjay Chandrakant Kirloskar. ...Petitioner.

Vs.

Babji Ramchandra Deshpande & Ors. ...Respondents.

.....

Mr.Nitin Pradhan with Ms.S. D. Khot for the Petitioner.
Mr. B.V.Ghanekar for Respondent No.1.
Mrs.Usha Kejariwal, APP for Respondent No.3 to 5.

.....

WITH

WRIT PETITION NO.1425 OF 2004

Maheen Sanjay Chandrakant Kirloskar. ...Petitioner.

Vs.

Shashikant Madhav Panditrao & Ors. ...Respondents.

.....

Mr.Nitin Pradhan with Ms.S. D. Khot for the Petitioner.
Mr. B.V.Ghanekar for Respondent No.1.
Mrs.Usha Kejariwal, APP for Respondent No.3 to 5.

.....

WITH

WRIT PETITION NO.1427 OF 2004

Prabhakar Dattatraya Gune. ...Petitioner.

Vs.

Vishnukant Bapurao Urankar & Ors. ...Respondents.

.....

Mr. Nitin Pradhan with Ms.S. D. Khot i/b. Ms.Manisha B. Patil for the Petitioner.
Mrs. Usha Kejariwal, APP for Respondent No.3 to 5.

.....

WITH

WRIT PETITION NO.1428 OF 2004

Prabhakar Dattatraya Gune. ...Petitioner.

Vs.

Usha Prabhakar Vaishampayan & Ors. ...Respondents.

.....

Mr. Nitin Pradhan with Ms.S. D. Khot i/b. Ms.Manisha B. Patil for the Petitioner.
Mrs. Usha Kejariwal, APP for Respondent No.3 to 5.

.....

WITH

WRIT PETITION NO.1429 OF 2004

Prabhakar Dattatraya Gune. ...Petitioner.

Vs.

Narhar Madhav Panditrao & Ors. ...Respondents.

.....

Mr. Nitin Pradhan with Ms.S. D. Khot i/b. Ms.Manisha B. Patil for the Petitioner.
Mr. B. V. Ghanekar for Respondent No.1.
Mr.B. H. Mehta, APP for Respondent No.3 to 5.

.....

WITH

WRIT PETITION NO.1430 OF 2004

Prabhakar Dattatraya Gune. ...Petitioner.

Vs.

Jaywant Govind Jadhav & Ors. ...Respondents.

.....

Mr. Nitin Pradhan with Ms.S. D. Khot i/b. Ms.Manisha B. Patil for the Petitioner.
Mr. B. V. Ghanekar for Respondent No.1.

Mr.B. H. Mehta, APP for Respondent No.3 to 5.

.....

WITH

WRIT PETITION NO.1431 OF 2004

Prabhakar Dattatraya Gune. ...Petitioner.

Vs.

Anil Sakharam Dandekar & Ors. ...Respondents.

.....

Mr. Nitin Pradhan with Ms.S. D. Khot i/b. Ms.Manisha B. Patil for the Petitioner.
Mr. B. V. Ghanekar for Respondent No.1.
Mr.B. H. Mehta, APP for Respondent No.3 to 5.

.....

WITH

WRIT PETITION NO.1432 OF 2004

Prabhakar Dattatraya Gune. ...Petitioner.

Vs.

Vinayak Krishna Kulkarni & Ors. ...Respondents.

.....

Mr. Nitin Pradhan with Ms.S. D. Khot i/b. Ms.Manisha B. Patil for the Petitioner.
Mr. B. V. Ghanekar for Respondent No.1.
Mrs.V. R. Bhansali, APP for Respondent No.3 to 5.

.....

WITH

WRIT PETITION NO.1433 OF 2004

Prabhakar Dattatraya Gune. ...Petitioner.

Vs.

Babji Ramchandra Deshpande & Ors. ...Respondents.

.....

Mr. Nitin Pradhan with Ms.S. D. Khot i/b. Ms.Manisha B. Patil for the Petitioner.
Mr. B. V. Ghanekar for Respondent No.1.
Mrs.V. R. Bhansali, APP for Respondent No.3 to 5.

.....

WITH

WRIT PETITION NO.1434 OF 2004

Prabhakar Dattatraya Gune. ...Petitioner.
Vs.
Shashikant Madhav Panditrao & Ors. ...Respondents.
.....
Mr. Nitin Pradhan with Ms.S. D. Khot i/b. Ms.Manisha B. Patil for the Petitioner.
Mr. B. V. Ghanekar for Respondent No.1.
Mrs.V. R. Bhansali, APP for Respondent No.3 to 5.
.....

WITH

WRIT PETITION Nos.1863, 1864 & 1865 OF 2004

Purshottam Radheshyam Khandelwal. ...Petitioner.
Vs.
State of Maharashtra & Ors. ...Respondents.
.....
Mr. A. M. Saraogi for the Petitioner.
Mrs. K. R. Bhansali, APP for Respondent No.1 (in W.P. 1863/04).
Mr. R. S. Khadapkar, APP for Respondent No.1 in W. P. 1864 & 1865 of 2004).
Mr. S. P. Kanuga for Respondent No.2.
.....

WITH

WRIT PETITION NO.2225 OF 2004

Suresh G. Motwani. ...Petitioner.
Vs.
State of Maharashtra & Ors. ...Respondents.
.....
Mr. S. G. Aney, Sr. Advocate i/b. Mr. K. J. Reddy for the Petitioner.
Mr.R. S. Khadapkar, APP for Respondent No.1.
.....

WITH

WRIT PETITION NO.2271 OF 2004

WITH

APPLICATION NO.2794 OF 2005

Kiran Vithal Vaidya. ...Petitioner.

Vs.

State of Maharashtra & Ors. ...Respondents.

.....

Mrs. Revati Mohite Dere for the Petitioner.
Mr. R. S. Khadapkar, APP for Respondent No.1.

.....

WITH

WRIT PETITION NO.2308 OF 2004

Narayandas @ Narubhai Laxmidas Thakkar. ...Petitioner.

Vs.

State of Maharashtra & Ors. ...Respondents.

.....

Mr. J. J. Shah for the Petitioner.
Mr. A. M. Shringarpure, APP for Respondent No.1.

.....

WITH

WRIT PETITION NO.2592 OF 2004

Shiv Ratan Kumar Pandey. ...Petitioner.

Vs.

State of Maharashtra & Ors. ...Respondents.

.....

Mr. Nitin Pradhan, with Ms. S. D. Khot for the Petitioner.
Mr. A. M. Shringarpure, APP for Respondent No.1.

.....

WITH

WRIT PETITION NO.2623 OF 2004

Vijay Singh B. Padode. ...Petitioner.

Vs.

State of Maharashtra & Ors. ...Respondents.

.....

None for the Petitioner.
Mr.A. M. Shringarpure, APP for Respondent No.1.

.....

WITH

WRIT PETITION NO.184 OF 2005

Shantaraj Yellappa Shetty. ...Petitioner.
Vs.
State of Maharashtra & Ors. ...Respondents.
.....
Mr. A. H. H. Ponda for the Petitioner.
Mr. A. M. Shringarpure, APP for Respondent No.1.
.....
WITH
WRIT PETITION NO.1011 OF 2005

Vijaysingh Balchand Padode & Ors. ...Petitioners.
Vs.
State of Maharashtra & Ors. ...Respondents.
.....
Mrs. Kamal Jain for the Petitioner.
Mr. R. M.Sadhavi, APP for Respondent No.1.
.....
WITH
WRIT PETITION NO.1159 OF 2004

Al-Ameen Islamic Financial and
Investment corporation. ...Petitioner.
Vs.
State of Maharashtra & Ors. ...Respondents.
.....
Mr. S. S. Sayyed for the Petitioner.
Mr. R. M. Sadhavi, APP for Respondent No.1.
.....
WITH
O. O. C. J.
WRIT PETITION NO.1900 OF 2002

Dr.Ramnarain S. Tarneja & Anr. ...Petitioners.
Vs.
State of Maharashtra. ...Respondent.
.....
Mr. S. G. Aney with Mr.H. Toor with Mr. F. Pooniwala, Mr. Z. A. Haq, Mr. Firoz Palkhiwala, Mr. Firdosh Pooniwala, Mr. S.A. Ahemd, and Mr. S.S.

Bhole i/b. Cr. Bayley & Co. for the Petitioner.
Mr. E. P. Bharucha, Sr.Advocate with Mr. N.P. Deshpande, AGP for the Respondent.

.....

CORAM : A. P. SHAH
D.K. DESHMUKH AND
DR. D.Y. CHANDRACHUD, JJ.

September 5, 2005.

PJUDGMENT (PER DR. D. Y. CHANDRACHUD, J):

I

The constitutional validity of the Maharashtra Protection of Interests of Depositors (In Financial Establishments) Act, 1999, forms the basis of challenge in this batch of petitions under Article 226 of the Constitution. These petitions have been placed before the Full Bench by the Learned Chief Justice, in pursuance of a reference made on 3rd September 2004 by a Division Bench. Though the Act has been challenged on several grounds, arguments before the Court have been confined to the legislative competence of the State Legislature to enact the law. Counsel appearing on behalf of the Petitioners and the State had fairly stated before the Court that it would become necessary for the Court to deal with the other challenges only in the event that this Court does not accept the principal challenge on the

ground of a want of legislative competence. We have come to the conclusion that the provisions of the Act are ultra vires for want of legislative competence in the State Legislature.

II

FACTS

2. The Petitioner in Writ Petition 5186 of 2001, was a whole time Director of Pennar Paterson Securities Limited, a company incorporated under the Companies Act, 1956 with a registered office at Hyderabad. The Company was a non-banking finance company and is stated to have advanced money to several Companies. The Company is stated to have sustained huge losses and on 24th November 1999, the High Court of Andhra Pradesh noted in the course of its order in a Company Petition that the Company had outstanding debts of Rs. 13.07 crores on 30th September 1999. A Provisional Liquidator was appointed by the High Court. The Liquidator was directed to recover the amounts due to the Company and to not distribute any portion of the recoveries to the creditors. Among the Consequential directions was a direction to the Official

Liquidator to associate three persons from amongst the secured creditors as part of a Committee that would submit a report to the Court on the viability of the Company. The Official Liquidator is stated to have submitted a report to the Andhra Pradesh High Court recording that an amount of Rs.17 crores could be recovered by the Company; that certain decrees have been obtained for the recovery of the outstanding dues which would have to be executed. The Company is stated to have received notices from depositors at Mumbai, Pune, Aurangabad and Nagpur seeking the repayment of their deposits on maturity and it has been stated that notices have been received threatening prosecution against the Company and its Directors under the provisions of the State Act. A declaration has been sought in these proceedings that the Act is ultra vires on the ground that the State Legislature did not possess legislative competence. We have adverted to the facts of the main petition before the Court with a view to enunciate in brief, a flavour of the underlying facts in this batch of cases. The common thread, as it were, is a default in the repayment of depositors in diverse parts of the State.

III

The Maharashtra Act.

3. The Act was reserved for and received the assent of the President of India on 21st January 2000. The Act was preceded by Ordinances promulgated on 29th April 1999 and on 2nd December 1999 and is deemed to have come into force on 29th April 1999 by virtue of the provisions of Section 1(2). The Statement of Objects and Reasons sets out the underlying basis of the enactment in the following terms:

> "There is mushroom growth of Financial Establishments in the State of Maharashtra in the recent past. The sole object of these Establishments is of grabbing money received as deposits from public, mostly middle class and poor on the promises of unprecedented highly attractive rates of interest or rewards and without any obligation to refund the deposit to the investors on maturity or without any provision for ensuring rendering of the services in kind in return, as assured. Many of these Financial Establishments have defaulted to return the deposits on maturity or to pay interest or render the services in kind, in return, as assured to the public. As such deposits run into crores of rupees. It has resulted in great public resentment and uproar, creating law and order problem in the State of Maharashtra, specially in the city like Mumbai which is treated as the financial capital of India. It is, therefore,

expedient to make a suitable special legislation in the public interest to curb the unscrupulous activities of such Financial Establishments in the State of Maharashtra."

Section 2(c) of the Act defines the expression "deposit" in the following terms:

"(c) "deposit" includes and shall be deemed always to have included any receipt of money or acceptance of any valuable commodity by any Financial Establishment to be returned after a specified period or otherwise, either in cash or in kind or in the form of a specified service with or without any benefit in the form of interest, bonus, profit or in any other form, but does not include-

-(i) amount raised by way of share capital or by way of debenture, bond or any other instrument covered under the guidelines given, and regulations made, by the SEBI, established under the Securities and Exchange Board of India Act, 1992 (15 of 1992);

-(ii) amounts contributed as capital by partners of a firm;

-(iii) amounts received from a scheduled bank or a co-operative bank or any other banking company as defined in clause (c) of Section 5 of the Banking Regulation Act, 1949 (10 of 1949);

-(iv) any amount received from, -

(a) the Industrial Development Bank of India,

(b) a State Financial Corporation,

(c) any financial institution specified in or under Section 6-

A of the Industrial Development Bank of India Act, 1964 (18 of 1964), or

(d) any other institution that may be specified by the Government in this behalf;

-(v) amounts received in the ordinary course of business by way of, -
(a) security deposit,
(b) dealership deposit,
(c) earnest money,
(d) advance against order for goods or services;

-(vi) any amount received from an individual or a firm or an association of individuals not being a body corporate, registered under any enactment relating to money lending which is for the time being in force in the State; and

-(vii) any amount received by way of subscriptions in respect of a Chit."

The expression "Financial Establishment" is similarly defined in Section 2(d) as follows :

"(d) "Financial Establishment" means any person accepting deposit under any scheme or arrangement or in any other manner but does not include a corporation or a co-operative society owned or controlled by any State Government or the Central Government or a banking company as defined under clause (c) of Section 5 of the Banking Regulation Act, 1949 (10 of 1949)".

Section 3 of the Act creates an offence in respect of a fraudulent default in the repayment of a deposit on maturity and provides for imprisonment upto six years and fine. Section 3 is as follows :

> "3. Fraudulent default by Financial Establishment. -- Any Financial Establishment, which fraudulently defaults any repayment of deposit on maturity along with any benefit in the form of interest, bonus, profit or in any other form as promised or fraudulently fails to render service as assured against the deposit, every person including the promoter partner, director, manager or any other person or an employee responsible for the management of or conducting of the business or affairs of such Financial Establishment shall, on conviction, be punished with imprisonment for a term which may extend to six years and with fine which may extend to one lac of rupees and such Financial Establishment also shall be liable for a fine which may extend to one lac of rupees.
>
> Explanation : For the purpose of this Section, a Financial Establishment, which commits default in repayment of such deposit with such benefits in the form of interest, bonus, profit or in any other form as promised or fails to render any specified service promised against such deposit, or fails to render any specific service agreed against the deposit with an intention of causing wrongful gain to one person or wrongful loss to another person or commits such default due to its inability arising out of impracticable or commercially not viable promises made while accepting such deposit or arising out of deployment of money or assets acquired out of the deposits in such a manner as it involves inherent risk in recovering the same when needed shall, be deemed to have committed a default or failed to render the specific service, fraudulently."

Section 4 of the Act provides for the attachment of properties upon a default in the repayment of deposits. Sub-sections (1) and (2) thereof are thus:

> "4. Attachment of properties on default of return of deposits.-- (1) Notwithstanding anything contained in any other law for the time being in force, --
>
> -(i) where upon complaints received from the depositors or otherwise, the Government is satisfied that any Financial Establishment has failed,--
>
> (a) to return the deposit after maturity or on demand by the depositor; or
>
> (b) to pay interest or other assured benefit; or
>
> (c) to provide the service promised against such deposit;
>
> or
>
> -(ii) where the Government has reason to believe that any Financial Establishment is acting in a calculated manner detrimental to the interest of the depositors with an intention to defraud them; and if the Government is satisfied that such Financial Establishment is not likely to return the deposits or make payment of interest or other benefits assured or to provide the services against which the deposit is received, the Government may, in order to protect the interest of the depositors of such Financial Establishment, after recording reasons in writing, issue an order by publishing it in the Official Gazette, attaching the money or the property believed to have been acquired by such Financial Establishment either in its own name or in the name of any other person from out of the deposits, collected by the Financial Establishment, or if it transpires

> that such money or other property is not available for attachment or not sufficient for repayment of the deposits, such other property of the said Financial Establishment or the promoter, director, partner or manager or member of the said Financial Establishment as the Government may think fit.
>
> -(2) On the publication of the order under sub-section (1), all the properties and assets of the Financial Establishment and the persons mentioned therein shall forthwith vest in the Competent Authority appointed by the Government, pending further order from the Designated Court."

4. Section 5 of the Act provides for the appointment of a Competent Authority, not below the rank of Deputy Collector to exercise control over monies and properties of a financial establishment attached by the Government under Section 4. Upon the promulgation of an order under Section 4, the Competent Authority has to apply within thirty days to the Designated Court under Section 5(3) stating the grounds on which Government has issued an order under Section 4; the money and property believed to have been acquired out of the deposit and the details of persons in whose name such property is believed to have been invested or acquired or of any other property attached under Section 4 for further

orders of the Designated Court.

5. Section 6 empowers Government, with the concurrence of the Chief Justice of the Bombay High Court to constitute one or more Designated Courts in the cadre of a District and Sessions Judge for such area or areas or for such case or class or group of cases, as may be specified in the notification. Thereupon, under sub-section (2) of Section 6, no Court shall have jurisdiction in respect of any matter to which the provisions of the Act apply, and all pending cases stand transferred to the Designated Court. The powers of the Designated Court are set out in Section 7 of the Act. Sub-section (1) of Section 7 requires the Designated Court on receipt of an application to issue to the Financial Establishment or to any other person whose property is attached and vested in the Competent Authority, a notice to show cause as to why the order of attachment should not be made absolute. A notice has also to be issued to all other persons who are represented to the Court as having or being likely to claim, any interest or title in the property of the Financial Establishment. Sub-section (4) of Section 7 empowers the Designated Court, in the

following terms, to realise the assets attached and to equitably distribute the proceeds among the depositors of the establishment:

> "(4) The Designated Court shall, if no cause is shown and no objections are made under sub-section (3), on or before the specified date, forthwith pass an order making the order of attachment absolute, and issue such direction as may be necessary for realisation of the assets attached and for the equitable distribution among the depositors of the money realised from out of the property attached."

Under sub-section (5) of Section 7, the Designated Court has to follow the summary procedure under Order 37 of the Code of Civil Procedure, 1908 (5 of 1908) and upon an investigation under sub-section (5), the Court is empowered by sub-section (6) to either make the order of attachment absolute or to vary or cancel the order of attachment. The proviso to sub-section (6) lays down that the Designated Court shall not release from attachment any interest which the Financial Establishment or a person specified in sub-section (1) has in the property unless it is also satisfied that there will remain under attachment an amount or property of value not less than the value that is required for repayment to the depositors of the Establishment. Section 8 empowers the Designated Court to attach

properties of transferees where the Court is satisfied that the transfer was not in good faith and for consideration. The Act makes other consequential provisions and in Section 14 provides that it shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any custom or usage or any instrument having effect by virtue of any such law.

IV

SUBMISSIONS :

1. The Petitioners.

6. The principal basis of challenge is that the State Legislature did not possess legislative competence to enact the law and that the law falls within the purview of the legislative heads enunciated in Entries 43 ('incorporation, regulation and winding up of trading corporations') and 44 ('incorporation, regulation and winding up of corporations with objects not confined to one State') of the Union list to the Seventh Schedule to the Constitution. It was submitted that the definition of the expression “Financial Establishment” in Section 2(d)

covers even non-banking financial companies and all other companies save and except for those which are controlled by the State Government and Banking Companies which fall within the purview of the Banking Regulation Act, 1949. It was submitted that under Entry 93 of the Union List Parliament can enact Legislation in respect of offences against laws with respect to any of the matters contained in List I. Entry 32 of the State List relates to the incorporation, regulation and winding up of corporations, other than those specified in List I, and hence the State Legislature is denuded of competence in respect of the incorporation, regulation and winding up of those corporations which fall within Entries 43 and 44 of the Union List. In the exercise of its legislative power, the Parliament has enacted the provisions of Sections 58A, 58AA and 58AAA of the Companies Act, 1956 to regulate the repayment of deposits, empower the company Law Board to direct repayment and constitute offences out of non compliance. Parliament similarly amended the Reserve Bank of India Act, 1934 to incorporate provisions in Chapter III-B in relation to non-banking financial companies and in Chapter III-C in relation to individuals and unincorporated bodies. The entire gamut is,

therefore, covered by Central legislation. The legislative competence of Parliament to enact Section 58A of the Companies Act, 1956 was upheld in **Delhi Cloth and General Mills Co.Ltd. vs. Union of India**, (1983) 4 SCC 166. The provisions of Chapter III-C of the Reserve Bank of India Act, 1934 were upheld by a Division Bench of the Delhi High Court in **Kanta Mehta vs Union of India**, 1987 Vol.62 Com.Cases 771 and this judgment was affirmed by the Supreme Court in **T. Velayudhan Achari v. Union of India,** (1993) 2 SCC 582. The Legislature of the State of Tamil Nadu, it was submitted, had enacted legislation, but while doing so, specifically excluded from its operation, Companies registered under the provisions of the Companies Act, 1956 and NBFCs. Counsel appearing on behalf of the Petitioners has assailed the attempt on the part of the State Government to sustain the validity of the legislation on the ground that it relates to public order within the meaning of Entry 1 of the State List. There was nothing in the Act, it was submitted, which has any bearing on public order and the subject of the Act did not relate to public order.

2. The State.

7. In attempting to sustain the constitutional validity of the Act, it has been asserted on behalf of the State Government that the Act is referable to the legislative head of public order in Entry 1 of the State List. The State submits that the Reserve Bank of India requested it to enact suitable legislation along with the lines of the legislation enacted in the State of Tamil Nadu since existing legislation was found to be inadequate to deal with such defaults. The absence of an appropriate legislative framework was also stated to have been noticed in orders passed by Division Benches of this Court. The State submits that a large number of depositors has been duped by financial establishments after collecting crores of rupees. These moneys were collected against promises to pay high rates of interest which were commercially not viable. The large scale on which small investors have been defrauded created a problem of law and order and the State Legislature was constrained to step in, having regard to to the magnitude of the problem. The Legislature having taken cognizance of the public resentment that was caused by defaults in the repayment of deposits, it was submitted that the legislation was

referable to Entry 1 of List II. Hence, it was submitted that the Legislation, in pith and substance, relates to public order and that the encroachment upon Entries 43 and 44 of the Union List is only incidental. In the alternative, it was submitted that even if the Court was of the view that the legislation was unconstitutional in its application to Companies and NBFCs, the validity of the Act could be sustained in its application to individuals and unincorporated bodies. In sum and substance, therefore, the submission on the part of the State is that the Act was enacted to deal with and control fraudulent defaults in the repayment of deposits where far fetched schemes were floated by promoters with no possibility of a commercially viable venture that was capable of refunding deposits or of performing the services which were promised. Hence, the law enacted by the State was neither a law in relation to banking under Entry 45 of List 1 or on the incorporation, regulation and winding up of Corporations falling within the purview of Entries 43 and 44 of the Union List.

V

Entries in the Seventh Schedule.

8. Entries 43, 44 and 45 of the Union List to the Seventh Schedule to the Constitution provide as follows :

> “43. Incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporations but not including co-operative societies.
>
> -44. Incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one State, but not including universities.
>
> -45. Banking.”

The entries in the State List that have a bearing on the submission in the present case on the part of the Respondents are thus:

> “1. Public order (but not including the use of any naval, military or Air force or any other armed force of the Union or of any other force subject to the control of the Union or of any contingent or unit thereof in aid of the civil power).
>
> -32. Incorporation, regulation and winding up of corporations, other than those specified in List I, and universities; unincorporated trading, literacy, scientific, religious and other societies and associations; cooperative societies.
>
> -64. Offences against laws with respect to any of the matters in this List.”

Entry 93 of the Union List deals with “Offences against laws with respect to any of the matters in this list.”

VI

The Impact of Sections 58A, 58AA and 58AAA of the Companies' Act, 1956.

9. Parliament enacted the provisions of Section 58A of the Companies' Act 1956 initially by the Companies (Amendment) Act, 1974 with effect from 1st February 1975. The object of enacting Section 58A was stated to be thus in the Notes on clauses:

> “It has been the practice of the companies to take deposits from the public at high rate of interest. Experience has shown that in many cases deposits so taken by the companies have not been refunded on the due dates. In many such cases either the companies have gone into liquidation or the funds are depleted to such an extent that the companies are not in a position to refund the deposits. It is accordingly considered necessary to control the companies inviting deposits from the public. ... Penal provisions have also been included. There is also a provision for the refund of the amount of deposits received by a company in violation of the requirements of the law.”

Sub-section (1) of Section 58A provides that the Central Government may, in consultation with the Reserve Bank of India, prescribe the limits up to which, the manner in which and the conditions subject to

which deposits may be invited or accepted by a company either from the public or from its members. Sub-section (2) of Section 58A contains a prohibition on Companies inviting any deposit (i) save and except in accordance with the rules made by the Central Government in sub-section (1); (ii) unless an advertisement reflecting the financial position of the Company has been issued in the prescribed form and manner; and (iii)unless there is no default by the Company in the repayment of any deposit together with interest in accordance with the terms and conditions governing the deposit. Under clause (a) of Sub-section (3) every deposit accepted by a Company at the commencement of the Amending Act of 1974, in accordance with the directions of the Reserve Bank of India under Chapter III-B of the Reserve Bank of India Act, 1934, became liable to be repaid in accordance with the terms and conditions of the deposit unless renewed. If a deposit was received by a Company in contravention of the directions of the Reserve Bank of India under Chapter III-B of the Reserve Bank of India Act, 1934 before the commencement of the Companies (Amendment) Act, 1974, repayment was liable to be made in full by 1st April 1975. Sub-section (3A) of Section 58A was

inserted by the Amending Act of 1988 with effect from 1st September 1989. Sub-section (3A) provides as follows:

> "(3A) Every deposit accepted by a company after the commencement of the Companies (Amendment) Act, 1988, shall, unless renewed in accordance with the rules made under Sub-section (1), be repaid in accordance with the terms and conditions of such deposit."

Sub-section (5) of Section 58A is material for the purposes of these proceedings and it provides thus :

> "(5) Where a company omits or fails to make repayment of a deposit in accordance with the provisions of clause (c) of Sub-section (3), or in the case of a deposit referred to in Sub-section (4), within the time specified in that Sub-section, -
>
> (a) the company shall be punishable with fine which shall not be less than twice the amount in relation to which the repayment of the deposit has not been made, and out of the fine, if realised, an amount equal to the amount in relation to which the repayment of deposit has not been made, shall be paid by the Court, trying the offence, to the person to whom repayment of the deposit was to be made, and on such payment, the liability of the company to make repayment of the deposit shall, to the extent of the amount paid by the Court, stand discharged;
>
> (b) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to five years and shall also be liable to fine."

Sub-sections (9) and (10) of Section 58A are in the following terms:

> "(9) Where a company has failed to repay any deposit or part thereof in accordance with the terms and conditions of such deposit, the Tribunal may, if it is satisfied, either on its own motion or on the application of the depositor, that it is necessary so to do to safeguard the interests of the company, the depositors or in the public interest, direct, by order, the company to make repayment of such deposit or part thereof forthwith or within such time and subject to such conditions as may be specified in the order:
>
> Provided that the Tribunal may, before making any order under this sub-section, give a reasonable opportunity of being heard to the company and the other persons interested in the matter.
>
> -(10) Whoever fails to comply with any order made by the Tribunal under sub-section (9) shall be punishable with imprisonment which may extend to three years and shall also be liable to a fine of not less than rupees five hundred for every day during which such non-compliance continues."

10. The provisions of Section 58A have been amended by Parliament in 1977, 1988, 1996, 1999, 2000 and in 2002 generally for incorporating provisions to make the law stringent. Clause 9 on the Notes on Clauses relating to the amendment of 1988 was inter alia as follows :

> "As a measure of protecting the interests of depositors, this clause provides for compulsory repayment of deposits

> unless renewed in the manner specified. It is intended to empower the Company Law Board to take cognizance of any case of non-payment of deposits on maturity and to provide adequate relief to the depositors. Non-compliance of the orders of the Company Law Board would attract penalty. A certain number of depositors, or depositors holding specified percentage of the total deposits due for payment, may seek relief from the Company Law Board on the company's failure to make repayment provided in law."

The Notes on Clauses accompanying the 1996 amendment were based on the Report of the Parliamentary Committee on Home Affairs and similarly provided thus :

> "The Committee welcomes the amendment proposed to be made through this clause in section 58A of the Companies Act, 1956, to debar such companies as default in making timely repayment of deposits to the public from accepting further deposits till the default in this behalf is made good by them. The Committee, however, feels that the penal provisions which presently exist in the Act to bring to book the companies which harass the depositors are seldom invoked or even if they are invoked, the necessary will to pursue them to their logical end is lacking on the part of official enforcement machinery. The Committee is, accordingly, of the view that the enforcement machinery be geared up to ensure more vigorous implementation of these penal provisions so that the depositors, particularly, the small investors who cannot afford to wage protracted legal battles with the defaulting companies, do not continuously suffer on getting their hard-earned money back. The Committee also recommends that strict norms of accountability be laid down in this regard and such of the officials as show laxity in dealing firmly with the companies

> fiddling with public money are held liable and proceeded against under the rules."

11. Parliament amended the provisions of the Companies Act, 1956, by the Companies (Amendment) Act, 2000, with effect from 13th December 2000 to make special provisions in relation to small depositors by inserting Sections 58AA and 58AAA. Sub-section (1) of Section 58AA provides that every company, which accepts deposits from small depositors, shall intimate to the Company Law Board any default made by it in repayment of any such deposits or part thereof or any interest thereupon. An intimation is required to be furnished within 60 days of default and intimations are required to be furnished on a monthly basis. Sub-section (3) of Section 58AA empowers the Company Law Board where a company has made a default in repayment of any deposit or part thereof or any interest thereupon to a small depositor, to exercise upon its own motion, the powers conferred by Sub-section (9) of Section 58A and to pass appropriate orders. A "small depositor" is defined by the Explanation 2 to Section 58AA as a depositor who has deposited in a financial year a sum not exceeding twenty thousand rupees in a company and to

include his successors, nominees and legal representatives. Sub-section (9) of Section 58AA creates an offence where there is a failure to comply with an order of the Company Law Board. The offence is punishable with imprisonment which may extend to three years and with a fine of not less than five hundred rupees for every day on which non-compliance continues. Every person who was a director of the Company is deemed to be guilty of the offence under Sub-section (10) of Section 58-AA. By virtue of the provisions of Section 58AAA, every offence connected with or arising out of the acceptance of deposits under Section 58A or Section 58AA is deemed to be a cognizable offence under the Code of Criminal Procedure, 1973.

VII

The Legislative Power of Parliament and Section 58A.

12. The constitutional validity of Section 58A was challenged before the Supreme Court in **Delhi Cloth and General Mills Co.Ltd. Vs. Union of India,** (1983) 4 SCC 166. A Bench of three Learned Judges of the Supreme Court repelled the challenge inter alia to the

legislative competence of Parliament to enact the legislation. It was urged before the Supreme Court that when a Company invites and accepts deposits, there comes into existence a lender-borrower relationship and that the legislation fell within the scope of 'money lending and money lenders' in Entry 30 of the State List. Applying the doctrine of pith and substance, the Supreme Court held that Section 58A of the Companies' Act, 1956 was referable to Entries 43 and 44 of the Union List and that Parliament did possess legislative competence to enact the provision. Entry 43 of the Union List, it must be noted, deals with the incorporation, regulation and winding up of trading corporations, including inter alia banking and financial corporations. Entry 44 deals with the incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one State.

13. The word “regulation”, it is well settled, is one of width and amplitude. In **Indu Bhushan Bose vs. Rama Sundari Debi,** 1969 (2) SCC 289, a Constitution Bench of the Supreme Court read the word “regulation” in Entry 3 of List I to include the power to control, govern

or direct by rules or regulations. The Court held that "this power to direct or control will include within all its aspects and all ingredients of regulation of house accommodation would be comprehended within the wide sense in which the entry has been designated". In **K. Ramanathan v. State of Tamil Nadu**, (1985) 2 SCC 116, Mr.Justice A. P. Sen speaking for a Bench of three Learned Judges of the Supreme Court again emphasised the comprehensive sweep of the power to regulate:

> "... The power to regulate carries with it full power over the thing subject to regulation and in absence of restrictive words, the power must be regarded as plenary over the entire subject. It implies the power to rule, direct and control, and involves the adoption of a rule or guiding principle to be followed, or the making of a rule with respect to the subject to be regulated. The power to regulate implies the power to check and may imply the power to prohibit under certain circumstances, as where the best or only efficacious regulation consists of suppression. It would, therefore, appear that the word 'regulation' cannot have any inflexible meaning as to exclude 'prohibition'. It has different shades of meaning and must take its colour from the context in which it is used having regard to the purpose and object of the legislation, and the Court must necessarily keep in view the mischief which the Legislature seeks to remedy."

14. The law enacted by Parliament, incorporating the provisions

of Section 58A, is in pursuance of the comprehensive power that is conferred upon Parliament by Article 246(1) read with Entries 43 and 44 of List I to regulate corporations which fall within the scope and purview of the aforesaid entry. Section 58A(3A) mandates that every deposit accepted by a company must be repaid in accordance with the terms and conditions of the deposit. Sub-Section (5) of Section 58A creates a criminal offence where a company "omits or fails" to repay the deposit. The expression "omits or fails" is wide enough to cover every default, even a fraudulent default on the part of a company. Under clause (b) of Sub-section (5) of Section 58A every officer of the company who is in default is liable to be punished with imprisonment which may extend to five years and to the payment of fine. Sub-section (9) of Section 58A empowers the Company Law Board to direct the company to make repayment of a deposit where it has failed to repay any deposit or part thereof in accordance with the terms and conditions governing the deposit. A failure to comply with an order of the Company Law Board, is a criminal offence under Sub-section (10) of Section 58A, which is punishable with imprisonment which may extend to three years and to a fine as spelt out in the

Section. The subsequent enactment by Parliament of Section 58AA is referable to the legislative head contained in Entries 43 and 44 of List I. Section 58AA makes a special provision in relation to small depositors and once again a failure to comply with the provisions of the Section or with an order of a Company Law Board constitutes a criminal offence which is punishable with imprisonment upto three years and a fine.

VIII

The Encroachment on the Union List.

15. The law enacted by the State Legislature in this case seeks to deal with fraudulent defaults by Financial Establishments. A fraudulent default within the meaning of the State Legislation covers essentially three situations: (i) A default on the part of a Financial Establishment in the repayment of a deposit with such benefits in the form of interest, bonus, profit or in any other form as promised; (ii) The failure to render a specified service promised or agreed against the deposit with an intention of causing wrongful gain to one person and wrongful loss to another person; and (iii) The commission of

default due to an inability arising out of an impracticable or commercially not viable promise made while accepting the deposit or arising out of the deployment of money or assets acquired out of the deposit in a manner that would involve an inherent risk in recovery. A “fraudulent default” within the meaning of the State law is squarely comprehended within the meaning of the expression “omits or fails” to pay any deposit within the meaning of the Central Legislation in Section 58A(5). Section 58A(5) of the Companies' Act, 1956 is in fact much wider, covering within its ambit every kind of omission or failure to repay a deposit. An imprisonment of upto five years and fine is provided for an infraction under clause (b) of Sub-section (5) of Section 58A of the Central Legislation. A fraudulent default within the meaning of Section 3 of the State Act attracts a sentence of upto six years' imprisonment under the State Act and a fine which may extend to one lakh of rupees. The expression “Financial Establishment” Section 2(d) of the State legislation does not include a corporation or a Co-operative Society owned and controlled by the State or Central Government or a banking Company. This analysis, therefore, makes it abundantly clear that there is a substantial overlapping between the

sanctions which are imposed by the State Act with those which have been provided for in the Central Legislation enacted in the form of Sections 58A and 58AA of the Companies' Act, 1956. The State Act goes on to make provisions in Section 4 for the attachment of properties in the event of a failure to return a deposit on maturity or on demand or to pay interest or to provide a service that was promised against a deposit. Similarly, when the Government has reason to believe that a Financial Establishment is acting in a calculated manner detrimental to the interest of the depositors with an intention to defraud them and if it is satisfied that such Financial Establishment is not likely to return the deposit or make payment of interest or other benefits that were assured, an order of attachment can be passed attaching the money or the property believed to have been acquired by the Financial Establishment. The Designated Court in Section 7 (4) is empowered to issue directions for realisation of the assets that were attached and for the equitable distribution among the depositors of the money realised from out of the properties that are attached. The Legislation enacted by the State Legislature, in the present case, therefore, clearly and substantially encroaches upon the area of

operation of Section 58A and Section 58AA of the Companies Act, 1956. The Supreme Court held that Section 58A is referable to Entries 43 and 44 of List I. This would apply to Section 58AA as well. The encroachment by the State legislation is on an area which falls within the exclusive legislative competence of Parliament in the Union List.

IX

The Reserve Bank of India Act, 1934.

A. Chapter III-B and NBFCs.

16. Parliament amended the provisions of the Reserve Bank of India Act, 1934, by the insertion of Chapters III-B and III-C. Chapter III-B enacts provisions relating to Non-Banking Institutions receiving deposits and Financial Institutions. Clause (aa) of Section 45-I which contains definitions, defines “company” to mean a company in Section 3 of the Companies Act, 1956. A “deposit” is defined in clause (bb) of Section 45-I to include and to have always included any receipt of money by way of deposit or loan or in any other form, but to exclude certain categories that are listed therein. Clause (c) of

Section 45-I defines the expression “financial institution” to mean a non-banking institution which carries on as its business or part thereof any of the activities stipulated therein. The activities which are included are, inter alia, the financing of any activity other than its own; the acquisition of shares, stock, bonds, debentures or securities issued by a Government or local authority; letting or delivering of any goods to a hirer under a hire-purchase agreement; insurance business; managing, conducting or supervising of chits and collecting for any purpose or scheme of monies by way of subscriptions or by sale of units and awarding prizes or gifts or disbursing monies in any other way to persons from whom monies are collected and an institution which carries on as its principal business, agricultural operations, industrial activity, purchase or sale of goods or purchase, construction or sale of immovable property. Section 45JA empowers the Reserve Bank of India to determine policy or to issue directions to non-banking financial companies where the Bank is satisfied that it is in the public interest to do so or to regulate the financial system or to prevent the affairs of an NBFC being conducted in a manner detrimental to the interest of the depositors or in a manner prejudicial

to its own interest. Section 45MC(1)(d) empowers the Reserve Bank to file an application for winding up of an NBFC inter alia where it is unable to pay its debts or where its continuance is detrimental to the public interest or to the interest of the depositors.

17. Wide ranging provisions have been incorporated in Chapter III-B under which the Reserve Bank of India exercises regulatory powers over NBFCs. Section 45Q gives overriding force to Chapter III-B notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Section 45QA empowers the Company Law Board to order an NBFC to repay a deposit in accordance with the terms and conditions governing such deposit, in the event of a failure to do so. Section 45QA is as follows :

> "45QA, Power of Company Law Board to order repayment of deposit- (1) Every deposit accepted by a non-banking financial company, unless renewed, shall be repaid in accordance with the terms and conditions of such deposit.
>
> -(2) Where a non-banking financial company has failed to repay and deposit or part thereof in accordance with the terms and conditions of such deposit, the Company Law Board constituted under Section 10E of the Companies Act, 1956 (1 to 1956) may, if it is satisfied, either on its own

motion or on an application of the depositor, that it is necessary so to do to safeguard the interests of the company, the depositors or in the public interest, direct, by order, the non-banking financial company to make repayment of such deposit or part thereof forthwith or within such time and subject to such conditions as may be specified in the order:

Provided that the Company Law Board may, before making any order under this sub-section, give a reasonable opportunity of being heard to the non-banking financial company and the other persons interested in the matter."

B : Chapter III-C : Individuals and Unincorporated Bodies.

18. Chapter III-C was inserted by Parliament in the Reserve Bank of India Act, 1934 by an amendment of 1984 to provide a prohibition on the acceptance of deposits by an unincorporated bodies. Section 45S provides as follows :

"45S. Deposits not to be accepted in certain cases – (1) No person, being an individual or a firm or an unincorporated association of individuals shall, accept any deposit-

-(i) if his or its business wholly or partly includes any of the activities specified in clause (c) of Section 45-I; or

-(ii) if his or its principal business is that of receiving of deposits under any scheme or arrangement or in any other manner, or lending in any manner:

> Provided that nothing contained in this sub-section shall apply to the receipt of money by an individual by way of loan from any of his relatives or to the receipt of money by a firm by way of loan from the relative or relatives of any of the partners."

A list of relatives is furnished in the explanation to Section 45-S. A violation of the provisions of Section 45-S is made punishable by Sub-section (5A) of Section 58B with imprisonment with a term which may extend to two years or with fine which may extend to twice the amount of deposit received or Rs.2,000/- whichever is more, or with both.

C. Parliamentary Legislative competence.

19. The provisions of Chapter III-C of the Reserve Bank of India Act, 1934 were challenged before the Delhi High Court, in **Kanta Mehta vs. Union of India,** (1987) 62 Com.Cases 771. A Division Bench consisting of Chief Justice Rajinder Sachar and Mrs.Justice Leila Seth held that Parliament had legislative competence to enact the provisions of Chapter III-C. The Delhi High Court noted that the

main business of the Petitioners before the Court was of accepting deposits, advancing monies to the public and to those in trade and in industry. “Banking” in the Banking Regulation Act, 1949 is defined to mean the accepting of deposits for the purposes of lending or investment of deposits of money from the public repayable on demand or otherwise and withdrawal by cheque, draft, order or otherwise. But for the absence of facilities to withdraw by cheque and drafts, the definition of “banking” in the 1949 Act applied to the activities carried on by the Petitioners. The Court noted that the business of accepting of deposits by the Petitioners was akin to banking, and fell within the purview of Entry 45 (“Banking”) in List I of the Seventh Schedule. It was urged before the Delhi High Court that the subject of Chapter III-C of the Reserve Bank of India Act, 1934, fell within the purview of Entry 32 of the State List, namely, “unincorporated trading”. The Court held that the argument was misconceived. Chapter III-C, dealt not with trading but with the acceptance of deposits. The Petitioners lent money to businessmen and did not, engage in the business of trading but of accepting deposits. The Delhi High Court noted that in the judgment of the

Supreme Court in **Delhi Cloth and General Mills Co.** (supra), submissions founded on Entry 30 of the State List were negatived by the Supreme Court. Even if the subject of Chapter III-C did not squarely fall within the scope of "Banking" in Entry 45 of the Union List, the only other entry which would cover the topic is, residuary entry 97 of the said List.

20. The judgment of the Delhi High Court was affirmed in appeal by a Bench of three Learned Judges of the Supreme Court in **T.Velayudhan Achari vs. Union of India,** (1993) 2 SCC 582. Paragraph 16 of the judgment of the Supreme Court extracts the conclusions drawn by the Delhi High Court and one of those relating to the legislative competence of Parliament to enact Chapter III-C was thus :

> "The business of acceptance of deposits from the public does not fall within Entry 30 or Entry 32 of List II of Schedule VII of the Constitution. It falls within Entry 45 or in any case under Entry 97 of List I of Schedule VII under which only Parliament has power to pass the impugned legislation. Parliament had full competence and power to pass Chapter III-C of the Reserve Bank of India Act, 1934."

The Supreme Court rejected the challenge to Chapter III-C on the ground of a violation of Article 19(1)(g) of the Constitution. The Supreme Court held that while the legislation placed restrictions on the right of the appellants to carry on business, what was essential was to safeguard the rights of depositors and to see that they were not preyed upon. In conclusion, while affirming the judgment of the Delhi High Court, the Supreme Court stated thus in para 43 page 597:

> "Therefore, we are in entire agreement with the Delhi High Court." (emphasis supplied).

The Supreme Court affirmed the judgment of the Delhi High Court in **Kanta Mehta**. The Delhi High Court had held that Chapter III-C of the Reserve Bank of India Act, 1934, was within the legislative competence of the Parliament, Parliament being empowered to enact the law with reference to Entry 45 of List I and, in any event Entry 97. The Supreme Court held that it was in entire agreement with the Delhi High Court.

X

PUBLIC ORDER.

Construing Entry 1 List II

21. Counsel appearing on behalf of the State Government has submitted that the law in question is within the competence of the State Legislature since it is relatable to public order within the meaning of Entry 1 of List II of the Seventh Schedule. Entry 1 of the State List is in the following terms :

> "1. Public order (but not including the use of any naval, military or Air force or any other armed force of the Union or of any other force subject to the control of the Union or of any contingent or unit thereof in air of the civil power."

On behalf of the Petitioners extensive reliance is sought to be placed on the decisions of the Supreme Court in so far as they explain the ambit of the expression "public order" in Article 19(2) of the Constitution. Whether the ambit of the expression "public order" in Article 19(2) of the Constitution can be applied *ipso facto* while

construing public order as a Legislative head in Entry 1 of List II will be considered shortly hereafter. But before that, it would be apposite to deal with some of the seminal precedents which define the content of the expression "public order" for the purposes of Entry 1 of List II. The first judgment to which a reference must be made is the judgment of the Federal Court in **Lakhi Narayan Das v. The Province of Bihar**, 1950 Vol.61 Cr. L. J. 921. Justice B.K. Mukherjea delivering the judgment of the Federal Court, noted the comprehensive ambit of the expression "public order" in Item 1 of the Provincial List to the Government of India Act, 1931:

> "The expression "Public Order" with which Item 1 begins is, in our opinion, a most comprehensive term and it clearly indicates the scope or ambit of the subject in respect to which powers of legislation are given to the province. Maintenance of public order within a province is primarily the concern of that province and subject to certain exceptions which involve the use of His Majesty's forces in aid of civil power, the Provincial Legislature is given plenary authority to legislate on all matters which relate to or are necessary for maintenance of public order." ((emphasis supplied).

In **Romesh Thapar vs. State of Madras**, AIR 1950 SC 124, the Supreme Court, dealing with the same subject matter observed thus:

> "....."Public order" is an expression of wide connotation and signifies that state of tranquility which prevails among the members of a political society as a result of internal regulations enforced by the Government which they have established..... it must be taken that "public safety is used as a part of the wider concept of public order....."

22. The ambit of the expression "public order" in the context of Article 19(2) of the Constitution fell for consideration in **The Superintendent, Central Prison vs. Dr.Ram Manohar Lohia,** AIR 1960 SC 633. Mr.Justice K. Subba Rao (as the Learned Chief Justice then was), speaking for the Supreme Court held that "Public Order" is "synonymous with public safety and tranquility: it is the absence of disorder involving breaches of local significance in contradistinction to national upheavals, such as revolution, civil strife, war affecting the security of the State" (para 18 page 641). In **Ram Manohar Lohia vs. State of Bihar**, AIR 1966 SC 740, where the validity of an order of detention under the Defence of India Act, 1962 was questioned, Mr.Justice M. Hidayatullah (as the Learned Chief Justice then was) elucidated the important distinction in cases where public order is a

legislative head as contradistinguished from those cases where a restriction on personal liberty is sought to be imposed on the ground of public order. The judgments in **Lakhi Narayan Das** (supra), **Romesh Thapar** and the later judgment in **Brijbhushan vs. State of Delhi**, AIR 1950 SC 129 were cited before the Court. In **Brijbhushan's** case, Mr.Justice Fazl Ali held that "public order" was wide enough to cover small disturbances of the peace which do not jeopardise the security of the State and the Learned Judge paraphrased the words 'public order' as 'public tranquility'. In the judgment in **Ram Manohar Lohia,** Mr.Justice Hidayatullah noted that these three decisions "dealt with the meaning in the legislative Lists as to which, it is settled, we must give as large a meaning as possible." This distinction is one of cardinal importance. Restrictions on the facets of personal liberty guaranteed by Article 19(1) of the Constitution, are contemplated on the grounds enumerated in Articles 19(2) to 19(6). Restrictions on the ground of public order are contemplated in Articles 19(2), Article 19(3) and Article 19(4) on the right to freedom of speech and expression, the fundamental right to assemble peacefully and without arms and the right to form associations or unions. A restriction on liberty has to

be reasonable and a restriction imposed by law on grounds of public order on the fundamental rights under Articles 19(1)(a), 19(1)(b) and 19(1)(c) has accordingly been construed. On the other hand, Public Order as a legislative head has been construed in the decision of the Federal Court in **Lakhi Narayan Das** as being an expression of wide connotation and as signifying that state of tranquility which prevails among the members of a political society as a result of internal regulations enforced by the Government. The head "public safety" is used as a part of the wider concept of public order. In the second **Ram Manohar Lohia** case (AIR 1966 SC 740) which took note of the distinction, Mr. Justice Hidayatullah formulated, a conceptual basis on the foundation of three concentric circles, Law and order being the largest within which is a circle representing public order, and the smallest representing security of the State. The Supreme Court held that an act may affect law and order but not public order just as an act may affect public order but not the security of State. Subsequent decisions which deal with the law of preventive detention have since dealt with the ambit of the expression "public order" as providing a valid basis for detention. (**Kanu Biswas vs. The State of West**

Bengal, AIR 1972 SC 1656, **Kishori Mohan Bera vs. The State of West Bengal**, AIR 1972 SC 1749 and **Harpreet Kaur vs. State of Maharashtra**, (1992) 2 SCC 177).

23. The basic question which however, falls for consideration in the present case is whether the enactment of legislation by the State Legilation here is on a subject which can be held to fall within the ambit of the expression "public order" in Entry 1 of List II. The answer to this question must be based on the true nature and character of the legislation. For, as the Federal Court held in **Lakhi Narayan Das** (supra):

> "To ascertain the class to which a particular enactment really belongs, we are to look to the primary matter dealt with by it, its subject-matter and essential legislative feature. Once the true nature and character of a legislation determine its place in a particular list, the fact that it deals incidentally with matters appertaining to other lists is immaterial."

Pith and Substance.

24. Article 246(1) confers upon Parliament the exclusive power

to make laws with respect to any of the matters enumerated in List I of the Seventh Schedule, notwithstanding anything in clauses (2) and (3). Similarly under clause (2) of Article 246, Parliament and, subject to clause (1), the Legislature of the State have power to make laws with respect to any of the matters enumerated in List III, notwithstanding anything in clause (3). The power of the Legislature of the State is to make laws for such State with respect to any of the matters in List II subject to clauses (1) and (2) of Article 246 of the Constitution.

25. The entries which are contained in the Union List, the State List and the Concurrent List in the Seventh Schedule to the Constitution are legislative heads or fields of legislation. They demarcate, as was noted by the Supreme Court in **Calcutta Gas Company Vs. State of West Bengal**, AIR 1962 SC 1044, the area over which the legislature can operate. The entries in the three lists must be given the widest amplitude. Some of the entries may seem to overlap and often times may appear to be in conflict. It is then the task of the Court to reconcile the entries and to embark upon an

interpretation that would harmonise the entries. The Court would eschew a construction which would deprive an entry of its meaning or content or for that matter one that would render an entire entry nugatory. A general word in an entry must be so construed as to comprehend all matters which reasonably can be regarded as ancillary or subsidiary. The Constitution is an organic document which demarcates the powers legislation in a federal polity. The legislative entries have been found to overlap and, therefore, legislation with respect to one of the entries may well trench upon an entry in another legislative list. The Court then has recourse to the doctrine of pith and substance. If in pith and substance a legislation falls within one list but some part of the subject matter falls within an entry in another list, the Act would be valid notwithstanding an incidental trenching. These principles which must guide the Court were reiterated by the Constitution Bench in **Kerala State Electricity Board vs. Indian Alluminium Co.Ltd**., (1976) 1 SCC 466. The Supreme Court held that while construing the provisions of clauses (1), (2) and (3) of Article 246, where an entry is in general terms in List II, and part of that entry is in specific terms in List I, the entry in

List I takes effect notwithstanding the entry in List II. This, the Supreme Court held, is also on the principle that the 'special' excludes the 'general', and the general entry in List II is subject to the special entry in List I. The word 'notwithstanding' in clause (1) of Article 246 means that if it is not possible to reconcile the two entries, the entry in List I will prevail. However, before that happens, an attempt should be made to decide in which list a particular legislation falls. For deciding under which entry a particular legislation falls, the theory of “pith and substance” has been evolved. These principles were reiterated by a Bench of seven Learned Judges in **Synthetic & Chemicals Ltd. vs. State of U. P.,** AIR 1990 SC 1927. The Supreme Court held that the Constitution must not be construed in a narrow or pedantic sense and that construction which is most beneficial to the widest possible amplitude of its power, must be adopted. If there is a conflict between the entries, the first principle is to reconcile them. But if this was not possible, the power of the Union will prevail since the words “notwithstanding” and “subject to” are important and give primacy to the central legislative power. These principles have been reiterated in a recent judgment of the Supreme Court in

Prof.Yashpal vs. State of Chhattisgarh, (2005) 5 SCC 420 (para 31 page 443 and para 48 page 453).

26. The doctrine of pith and substance has an interesting origin. Latham C.J. while speaking for the High Court of Australia in **Bank of New South Wales v. The Commonwealth,** 1947-48 Commonwealth Law Reports, Vol.76 page 184, traced the origin of the doctrine from "pith and marrow" in patent law. The Learned Judge noted thus:

> "... the phrase "pith and substance ... is a metaphorical phrase possibly derived from "pith and marrow" in patent law. Wills J. in Incandescent Gas Light Co. v. De Mare Incandescent Gas Light System Ltd. (3) said of the latter phrase :- " 'Pith' is a great deal less than the substance of the vegetable structure of which it is part, and 'marrow' a great deal less than the substance of the animal structure of which it is part. Metaphors are very apt to mislead, as they are seldom close enough to the things to which they are applied." The difference, if any, between "pith" and "substance" is not explained."

The doctrine has a firm foundation in our constitutional jurisprudence.

<u>The nature and character of State legislation</u>.

27. The question as to whether the law enacted by the State Legislature in this case can be justified with reference to public order in Entry 1 of List II, must primarily depend upon true nature and character of the Legislation. Undoubtedly, as the Supreme Court held in **Shashikant Laxman Kale vs. Union of India**, (1990) 4 SCC 366 to sustain the presumption of constitutionality, considerations may be had even to matters of common knowledge; the history of the times; and every conceivable state of facts existing at the time of legislation which can be assumed. Reliance has been placed on the Statement of Objects and Reasons to demonstrate that a situation had evolved in the State of Maharashtra in which financial establishments had mushroomed with the object of grabbing money received as deposits from the public on the basis of attractive rates of interest or rewards. There were defaults in the repayment of deposits and these defaults created law and order problems in the State, more particularly in Mumbai which in the fashion of the times is referred to as the 'financial capital'.

28. The question as to whether the legislation is with reference

to public order must turn on the provisions which have been made by the Legislature. Now, those provisions do not, in our view, establish that this is a legislation with respect to public order. Section 3 of the Act penalises fraudulent defaults by financial establishments in the repayment of deposits. Section 4 provides for the attachment of properties on a default in the return of deposits. Sections 5 and 6 provide for the appointment of a Competent Authority and of Designated Courts; Section 7 deals with the power of the Designated Court to realise the assets and distribute the proceeds equitably among depositors and Section 8 provides for the attachment of property of mala fide transferees. None of these provisions would demonstrate that the pith and substance of the Act is in relation to public order. On the contrary, the substance of the Act is to deal with cases involving a fraudulent failure on the part of financial establishments to repay depositors and to secure the repayment to depositors of their deposits by the attachment of properties, avoidance of mala fide transfers, the realisation of the attached assets and by equitable distribution between depositors. The Act creates offences and provides for punishment of those offences in Section 3.

The law enacted by the State Legislature is essentially a law which defines an offence with reference to a fraudulent default in the repayment of deposits. The law cannot, in pith and substance, be read and regarded as a law with reference to public order.

29. Two decisions of the Supreme Court elaborate upon the genesis and content of a law relating to public order. In **State of Rajasthan v. G. Chawla,** AIR 1959 SC 544, the Supreme Court dealt with the Ajmer (Sound Amplifiers Control) Act, 1953. The Act was successfully impugned before the Judicial Commissioner of Ajmer who held that it was in excess of the powers conferred on the State Legislature under Section 21 of the Government of Part C States Act, 1951, and, therefore, ultra vires the State Legislature. Entry 31 of the Union List inter alia deals with Broadcasting and other like forms of communication. The Supreme Court held that amplifiers are instruments of broadcasting and even of communication, and hence fall within the ambit of Entry 31 of the Union List. The manufacture, licensing or control of their ownership or possession including the regulating of the trade in such apparatus is one matter,

but the control of the 'use' of such apparatus to the detriment of tranquility, health and comfort of others is quite another. Entry 6 of the State List inter alia deals with public health and sanitation. The Supreme Court held that it could not be said that public health did not demand control of the use of such apparatus by day or by night, or in the vicinity of hospitals, schools, offices or habited localities. Hence, the power to legislate in relation to public health included the power to regulate the use of amplifiers as producers of loud noises when the right of such user, by the disregard of the comfort of and obligation to others emerges as a manifest nuisance to them. The Supreme Court hence, held that the pith and substance of the Act was the control of the use of amplifiers in the interests of health and also tranquility. The Court held that the substance of the legislation was under Entry 6 and conceivably, Entry 1 of the State List. The second decision is a decision of the Constitution Bench in **Rev. Stainislaus vs. State of Madhya Pradesh,** (1977) 1 SCC 677. In that case, the controversy arose over the Madhya Pradesh Dharma Swatantraya Adhiniyam, 1968 and the Orissa Freedom of Religion Act, 1967. The Orissa Act had been declared to be ultra vires the

Constitution by the High Court while the Madhya Pradesh Act had been upheld by the Madhya Pradesh High Court. The State Acts inter alia prohibited conversion from one religion to another by the use of force, allurement or by fraudulent means (in the case of the Madhya Pradesh Act) and by the use of force, inducement or fraudulent means (in the case of the Orissa Act). The Supreme Court held thus:

> "The expression "public order" is of wide connotation. It must have the connotation which it is meant to provide as the very first Entry in List II. It has been held by this Court in Ramesh Thappar v. State of Madras that "public order" is an expression of wide connotation and signifies state of tranquility which prevails among the members of a political society as a result of internal regulations enforced by the Government which they have established.
>
> Reference may also be made to the decision in Ramjilal Modi v. State of U. P. where this court has held that the right of freedom of religion guaranteed by Articles 25 and 26 of the Constitution is expressly made subject to public order, morality and health, and that
> it cannot be predicated that freedom of religion can have no bearing whatever on the maintenance of public order or that a law creating an offence relating to religion cannot under any circumstances be said to have been enacted in the interests of public order.
> It has been held that these two Articles in terms contemplate that restrictions may be imposed on the rights guaranteed by them in the interests of public order. Reference may as well be made to the decision in Arun Ghosh v. State of West Bengal where it has been held that

> if a thing disturbs the current of the life of the community, and does not merely affect an individual, it would amount to disturbance of the public order. Thus if an attempt is made to raise communal passion, e.g. On the ground that some one has been "forcibly" converted to another religion, it would, in all probability, give rise to an apprehension of a breach of the public order, affecting the community at large. The impugned Acts therefore, fall within the purview of Entry 1 of List II of the Seventh Schedule as they are meant to avoid disturbances to the public order by prohibiting conversion from one religion to another in a manner reprehensible to the conscience of the community."

30. Both these cases provide instances where the subject matter of the legislation had a real and substantial nexus cases with respect to public order. In the first case, the law regulated the use of amplifiers and the Supreme Court held that there was a real connection between public health and tranquility on one hand and the use of amplifier on the other. Excessive use of loud speakers in disregard to the comfort of others is liable to be a nuisance to society. Hence, the legislation was held to be relatable to public health and conceivably, to public order. In the second case, a recourse to conversion by force, threat or through the use of fraudulent means was liable to raise communal passions and to give rise to an apprehension of a breach of public order affecting the community at

large. In the present case, on the other hand, the substance of the legislation is not to deal with a problem of public order, but to control and regulate deposits accepted by financial establishments by creating an offence of a fraudulent default in the payment of deposits and laying down provisions for the attachment of assets, realisation of assets and for equitable distribution of the proceeds to depositors. This, in essence, is not a law in relation to public order. Indeed, as has been noted earlier, legislation on the same subject has been enacted by Parliament in Sections 58A, 58AA and 58AAA of the Companies Act, 1956. Section 58A has been held specifically to relate to the legislative head contained in Entries 43 and 44 of List I. The legislation enacted by Parliament in the form of Chapter III-C of the Reserve Bank of India Act, 1934 has similarly been upheld as having been enacted with respect to the legislative heads contained in Entry 45 of List I or, at any rate, under Entry 97.

31. Counsel appearing on behalf of the State urged that what the legislation does in the present case is to carve out a category from the subject matter of the Central legislation, namely, the category of

fraudulent default and to provide for a special machinery that would be effective in realising the dues of depositors. The Reserve Bank of India, it was submitted, addressed a letter to the Chief Secretary to the State Government on 12th August 1998 requesting that a suitable legislation can be considered on the model of The Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997. Again it was submitted that a Division Bench of this Court had in **Kirit Somaiya vs. SEBI** (1999) 2 LJ 223 and in **Securities and Exchange Board of India vs. Libra**, 1998 4 LJ 421, adverted to a 'mushrooming' of Companies which had defrauded investors. This background cannot, however, sustain the legislation once the Court comes to the conclusion that there is a clear want of legislative power in the State Government. The State cannot carve out an area of legislation that falls in the Union List on the supposed hypothesis that the legislation enacted by Parliament is not effective. A resource to the supposed inefficacy of a law enacted by Parliament must lie to Parliament. In **P.N. Krishna Lal vs. Govt. of Kerala**, 1995 Supp(2) SCC 187, the State Legislature amended the provisions of the Kerala Abkari Act so as to impose penal sanction for adulterating liquor or

intoxicating drugs with noxious substances and to provide for the payment of compensation. The Supreme Court held that the Act fell within the purview of Entry 8 of the State List and that the legislature could, therefore, impose penal sanctions under Entries 64 and 65 of the List. The trespass into the field of operation of the Central legislation was only incidental. That was, therefore, a case where the creation of an offence by the State legislature was under a legislation referable to the power of the State Legislature to legislate on a subject clearly falling within the State List.

32. Finally, it was urged on behalf of the State even if the Court were to come to the conclusion that the State law in so far as it regulates Companies and NBFCs is unconstitutional, the legislation could well be saved in its application to individuals and unincorporated entities by applying the doctrine of severability. It is not possible to accept this submission. The provisions of Chapter III-C of the Reserve Bank of India Act, 1934 were upheld by the Delhi High Court in **Kanta Mehta's** case specifically with reference to the legislative head contained in Entry 45 of List I or at any rate Entry 47.

These provisions regulate individuals and unincorporated bodies in relation to the acceptance of deposits. The judgment of the Delhi High Court was upheld by the Supreme Court in T. **Velayudhan Achari** (supra). The judgment of the High Court having been approved, it would not be permissible for this Court to take any other view in regard to the source of the legislative head relating to the acceptance of deposits by individuals and unincorporated bodies. We have perused the judgment of the Learned Single Judge of the Madras High Court. The attention of the Learned Single Judge was not adequately drawn to the fact that the reasoning contained in the judgment of the Delhi High Court in **Kanta Mehta** has been affirmed in para 43 of the judgment of the Supreme Court in **T.Velayudhan Achari**'s case.

XI

Summation:

33. This is not a case where a state law is essentially and in substance with respect to a matter in the State List. Were it to be, an

incidental encroachment on a subject reserved for the Union would not have risked attracting the vice of unconstitutionality. The substance of legislation determines constitutionality. An incidental trenching on a subject not reserved to the States is permitted when the substance still is within the purview of the power of the State. What is incidental is not of constitutional significance; this is so not because the incident is an aberration but because the incident is not of such overarching significance as to be determinative of the true character of the law. Subjects of legislative power are not defined by boundaries constructed with iron fences. The boundaries are open textured and porous; in their peripheries they may possess common attributes or characteristics. The vice of the State law in this case is that its core has transgressed into a field reserved for Parliament. The transgression of the core into the Parliamentary domain is ever clearer when one has regard to legislation enacted by Parliament. In relation to corporate entities, the State law penalises a species of default – a fraudulent failure to repay – which is clearly within the purview of the sanctions imposed by the Companies Act, 1956. The State law regulates by imposing penal sanctions on transactions

which Parliament has regulated by the imposition of sanctions. The penalties which the State law envisages are at variance with what Parliament envisaged. Provisions have been made in the State law for attachment, realisation and equitable distribution of assets among depositors. There are provisions for tracing assets and for the avoidance of mala fide transfers. The State government submits that Parliamentary legislation was deficient and the law had to be armed with teeth to reach out to and penalise wrong doing. This lies outside the competence of the States where the subject of the legislation is with respect to an entry in the Union List. The deficiencies that are perceived in Parliamentary Legislation have to be corrected by Parliament. The State legislature cannot arrogate to itself the power to supplant, or for that matter, supplement Parliamentary legislation on an area in the Union List. That is what in effect the State Legislature has done here on the logic that Parliament has not been adequate in its enactment. That logic is not constitutionally sound in our federal polity.

34. Public order is a subject that is reserved to the States in our

constitutional scheme. It may appear tautological to say that legislation on public order must in substance be based upon public order. The point is of significance because numerous problems of law enforcement and of maintaining public order have their genesis in diverse and complex societal issues. If the State, in the process of enacting legislation on public order, were to legislate by regulating substantive areas which fall in the Union List, that would lead to the destruction of the basic scheme envisaged in the distribution of legislative powers. Legislation on public order must address public order. Otherwise, in the guise of legislating on public order, substantive areas which are reserved to Parliament in the Union List would be subject to regulation by the States. This is impermissible. A law on public order must truly and essentially address itself to the preservation and maintenance of public order. That is not what the State law does in the present case. The essential nature of the State law in the present case is not public order, but subjects which fall within the Union List.

35. In these circumstances, we hold that :

-(i) The provisions of Section 58A of the Companies Act, 1956 have been upheld by the Supreme Court in **Delhi Cloth and General Mills Co. Ltd. vs. Union of India,** (1983) 4 SCC 166. The provisions of Chapter III-C of the Reserve Bank of India Act, 1934 were upheld by the Delhi High Court in **Kanta Mehta vs. Union of India**, 62 Com. Cases 771. The judgment of the Delhi High Court is affirmed by the Supreme Court in **T. Velayudhan Achari vs. Union of India**, (1993) 2 SCC 582;

-(ii) The Supreme Court held that Parliament has legislative competence to enact Section 58A of the Companies Act, 1956 and that the provision was relatable to the legislative heads contained in Entries 43 and 44 of List I of the Seventh Schedule. The same principle of law must apply to the subsequent amendments to the Companies Act, 1956 by which the provisions of Section 58AA and Section 58AAA were introduced;

-(iii) The legislative competence of Parliament to enact Chapter III-C of the Reserve Bank of India Act, 1934 was upheld by the Delhi

High Court with reference to the provisions of Entry 45 of List I and at any rate with reference to Entry 97 of List I. The reasoning of the Delhi High Court has been affirmed by the Supreme Court. Hence, it would not be possible for this Court to hold that legislation regulating deposits in relation to unincorporated entities and individuals, is referable to a legislative head in the State List;

-(iv) The legislation enacted by the State Legislature in the present case directly conflicts with the provisions contained in the Central Legislation. The ingredients of the offence of fraudulent default in the repayment of the deposits as created in Section 3 of the State Act squarely fall within the provisions of Section 58A and Section 58AA. The State Legislature has created an offence in respect of the same subject matter and providing for different punishments;

-(v) The law enacted by the State Legislature is in pith and substance referable to legislative heads contained in List I of the Seventh Schedule. The essential character of the legislation is not

with reference to public order.

-(vi) The State Legislature has in the present case enacted a law which it was not competent to enact.

36. The State Legislation in the present case, namely, the Maharashtra Protection of Interests of Depositors (In Financial Establishments) Act, 1999, is accordingly declared to be ultra vires. The Petitions are accordingly allowed. There shall be no order as to costs.

37. The issue as to whether the State legislature has the legislative competence to enact the provisions of the Act involves a question as to the distribution of legislative powers between the Union and the States. The case involves a substantial question of law as to the interpretation of the Constitution, within the meaning of Article 132 (1) of the Constitution. We accordingly certify, under the provisions of Article 134A of the Constitution, that the case involves a substantial question of law as to the interpretation of the Constitution.

On the request of Mr. Bharucha, it is directed that no action will be taken in pursuance of this Judgment for a period of 12 weeks.

.....